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18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN FRANCISCO DIVISION**

21 **IN RE GOOGLE PLAY STORE**  
22 **ANTITRUST LITIGATION**

23 THIS DOCUMENT RELATES TO:

24 *Epic Games, Inc. v. Google LLC et al.*,  
Case No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**EPIC GAMES, INC.'S  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER ANOTHER  
PARTY'S MATERIALS SHOULD BE  
SEALED**

Judge: Hon. James Donato

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Epic Games, Inc. (“Epic”) hereby moves the Court to issue an administrative order on the filing under seal of certain portions of Epic’s Response to Google’s Proffer Regarding Epic’s Proposed Injunction (“Epic’s Response”), its accompanying exhibits (“Exhibits”), Dr. Michael D. Ernst’s Declaration in Support of Epic’s Response (“Ernst Declaration”), and Dr. James Mickens’ Declaration in Support of Epic’s Response (“Mickens Declaration”). Public, redacted versions of these materials have been filed in accordance with this Court’s Local Rules.

Subsection (f) of Civil Local Rule 79-5 sets forth procedures that apply when a party seeks to file information designated as confidential by the opposing party. Under subsection (f)(1), the Filing Party’s Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed “must identify each document or portions thereof for which sealing is sought”. Pursuant to subsection (f)(3) of Local Rule 79-5, the Designating Party then has 7 days to file a declaration establishing that all of the designated material is “sealable” according to the standards set out in subsection (c)(1), after which any party may respond within 4 days, pursuant to subsection (f)(4).

Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party makes “a specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of (i) the legitimate private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive alternative to sealing is not sufficient”. Civ. L.R. 79-5(c)(1) (emphasis in original). The party seeking to seal documents must demonstrate compelling reasons that outweigh the policies favoring disclosure. (*See* Google’s Administrative Motion to File Under Seal Material In Connection with Google’s Proffer, Dkt. 982 at 2); *see also* *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016) (defining dispositive motions subject to the compelling reasons standard as those that “more than tangentially related to the merits of the case”). Generally, compelling reasons that justify the sealing of court records exist “when such court files might have become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade

secrets”. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (internal quotation marks omitted). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records”. *Id.* Moreover, “[t]he fact that the parties may have designated a document as confidential under a stipulated protective order is also not enough to justify sealing.” *In re Google Play Store Antitrust Litig.*, 2021 WL 4190165 (N.D. Cal. Aug. 25, 2021).

Epic’s Response, the Exhibits, the Ernst Declaration and the Mickens Declaration contain information that is sourced from documents that Defendants Google LLC, Google Ireland Limited, Google Commerce Limited, Google Asia Pacific Pte. Limited, and Google Payment Corp. (collectively, “Google”) have designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the operative Protective Orders entered by the Court, ECF Nos. 123, 154 and 170. Those portions are identified in the Declaration of Yonatan Even submitted herewith and highlighted in the under seal version of Epic’s Response, the Exhibits, the Ernst Declaration and the Mickens Declaration.

Document	Portion Containing Designated Information	Designating Party
Epic’s Response	Page 2, Line 11	Google
Epic’s Response	Page 4, Line 14	Google
Epic’s Response	Page 5, Lines 17-18	Google
Epic’s Response	Page 5, n.1	Google
Epic’s Response	Page 6, Line 8	Google
Epic’s Response	Page 6, Lines 11-14	Google
Epic’s Response	Page 8, Lines 22-26	Google
Epic’s Response	Page 9, Line 2	Google
Epic’s Response	Page 9, Lines 25-26	Google
Epic’s Response	Page 10, Line 2	Google

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Epic's Response	Page 10, Lines 20-23	Google
Epic's Response	Page 11, Lines 12-14	Google
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Epic's Response	Page 25, Lines 15-18	Google
Epic's Response	Page 25, Line 19	Google
Excerpts of Deposition Transcript of David Kleidermacher (Exhibit 1)	Redacted in Full	Google
Excerpts of Deposition Transcript of Vitor Baccetti (Exhibit 2)	Redacted in Full	Google
Excerpts of Deposition Transcript of Edward Cunningham (Exhibit 3)	Redacted in Full	Google
Excerpts of Deposition Transcript of	Redacted in Full	Google

Document	Portion Containing Designated Information	Designating Party
Christian Cramer (Exhibit 4)		
Ernst Declaration	Page 2, Lines 5-7	Google
Ernst Declaration	Page 2, Line 9	Google
Ernst Declaration	Page 4, Line 10	Google
Ernst Declaration	Page 5, Line 1	Google
Ernst Declaration	Page 5, Line 15	Google
Ernst Declaration	Page 5, Line 16	Google
Ernst Declaration	Page 5, Line 17	Google
Ernst Declaration	Page 5, Line 18	Google
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Ernst Declaration	Page 29, Lines 7-9	Google
Ernst Declaration	Page 31, Lines 21-22	Google
Ernst Declaration	Page 33, Line 17	Google
Mickens Declaration	Page 9, Line 21	Google
Mickens Declaration	Page 10, Lines 1-2	Google

Epic opposes the sealing of any portions of these documents but seeks leave to provisionally file the documents under seal as materials were designated confidential or highly confidential by another party. *See* Local Rule 79-5(f). Epic reserves the right to oppose, under Rule 79-5(f)(4), any submission Google makes to support sealing under Rule 79-5(f)(3).

1 Epic also hereby provides notice of lodging to all parties and their counsel  
2 pursuant to Civil Local Rule 79-5(f).

3  
4 Dated: July 24, 2024

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12 Respectfully submitted,

13 By: /s/ Yonatan Even  
14 Yonatan Even

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